

INTERIM IRM PROCEDURAL UPDATE

DATE: 12/04/2009

NUMBER: WI-21-1209-0997

SUBJECT: Legislative Changes to Employer Returns, Change to FA Closing Codes

AFFECTED IRM(s)/SUBSECTION(s): 21.3.4

CHANGE(s):

IRM 21.3.4.16.1 updated to reflect legislative changes and to more closely adhere to FA employees' responsibilities with regard to employment taxes.

1. Every employer who, during the current or preceding calendar year, paid wages of \$1,600 or more in any calendar quarter, or had one or more employees for some part of a day in any 20 or more different weeks, must file Form 940 or Form 940-EZ (obsolete after 2005) which is a streamlined form. The FUTA tax rate is calculated at 6.2% (.062) on the first \$7,000 of wages paid to each employee during the calendar year.
2. Form 940/Form 940-EZ (obsolete after 2005) is an annual return due January 31 of the next year. However, if you deposited all of the FUTA tax when due, you have 10 additional calendar days to file.
3. Agricultural employers are liable for FUTA tax if:
 - a. Cash wages of \$20,000 or more were paid to agricultural workers in any calendar quarter in the current or preceding year, or
 - b. Ten or more agricultural workers were employed during some part of the day during any 20 different weeks in the current or preceding calendar year.
4. Household employers must pay FUTA taxes ONLY if they paid cash wages of \$1,000 or more in any calendar quarter in the current or preceding calendar year for household work. Generally, individuals, estates, and trusts that owe FUTA tax for domestic service in a private home, must file Schedule H (Form 1040). However, if an employer has other employees in addition to household employees, the employer can choose to include the FUTA taxes for their household employees on Form 940 instead of filing Schedule H (Form 1040). If the employer chooses to include household employees on Form 940, the employer must also report social security, Medicare, and withheld federal income taxes for household employees on Form 941, Form 944, or Form 943. See IRM 4.19.5.4.4,

Sch. H *Household Employment Taxes* under Section 3510, and Publication 926, *Household Employer's Tax Guide*.

5. Although Form 940 covers a calendar year, employers must deposit FUTA tax before they file Form 940. If an employer's FUTA tax is more than \$500 for the calendar year, they must deposit at least one quarterly payment. Employers must determine when to deposit their tax based on the amount of their quarterly tax liability. If the FUTA tax is \$500 or less in a quarter, carry it over to the next quarter. Employers can continue to carry over their tax liability until the cumulative tax is more than \$500. At that point, employers must deposit their tax for the quarter. FUTA tax must be deposited by the last day of the month after the end of the quarter. If the tax for the next quarter is \$500 or less, employers are not required to deposit their tax again until the cumulative amount is more than \$500.

NOTE: Deposit requirements can be found in Publication 15 (*Circular E*), and Publication 51 (*Circular A*).

6. Employers may deposit their FUTA tax electronically by using EFTPS or by depositing their tax with an authorized financial institution (for example, a commercial bank that is qualified to accept federal tax deposits). Currently IRS can process Form 940 electronically. Two program options are available for businesses.
 - Form 940 *e-file* Program
 - Form 940 Online Filing Program (for additional information, see IRM 21.7.3.4.18.1, 940 *e-file* options).

IRM 21.3.4.16.2(1), (5), (6) and (7) updated to include legislative changes and to more closely adhere to FA employees' responsibilities with regard to employment taxes.

1. Form 941, Employer's QUARTERLY Federal Tax Return, is used by employers to report income tax withheld from wages, including tips, supplemental unemployment compensation benefits, third party payments of sick pay, and both the employee and employer shares of social security and Medicare taxes. Publication 15 (Circular E) *Employer's Tax Guide*, contains complete information on filing employment tax forms and should be given to the taxpayer. For tax year 2009, an employer with a Form 944 filing requirement may opt out of filing Form 944 and file Form 941 instead under certain circumstances (See IRM 21.3.4.16.4). Beginning in 2010, employers will be able to opt out of filing Form 944 for any reason, if they follow the procedures set forth in future published guidance.
5. The IRS uses two different sets of deposit rules to determine when businesses must deposit their social security, Medicare, and withheld federal income taxes. These schedules tell you when a deposit is due after you have

a payday. Employers may be monthly or semiweekly schedule depositors. Employers must deposit federal taxes withheld and both the employer and employee social security and Medicare taxes plus or minus any prior period adjustments to their tax liability (minus any advance EIC payments). They must deposit by using the EFTPS or by mailing or delivering a check, money order or cash with Form 8109B (Federal Tax Deposit Coupon) to a financial institution that is an authorized depository for federal taxes. Some employers are required to deposit using EFTPS.

Some employers may make a payment with Form 941, instead of depositing, without incurring a penalty, if the following applies:

- a. They report less than a \$2,500 tax liability for the quarter on line 10 of the Form 941. However, if the taxpayer is unsure that their taxes will be less than \$2,500 for the quarter, the taxes should be deposited using the appropriate rules (above) to avoid failure to deposit penalties.
- b. They are a monthly schedule depositor and make a payment in accordance with the Accuracy of Deposits Rule.

There are two methods of depositing employment taxes:

- c. Electronic Deposit Requirement - The employer must electronically deposit all depository (employment taxes, excise taxes and corporate income taxes) if:

The total deposits of depository taxes in 2007 were more than \$200,000 or

They were required to use EFTPS in 2008 or any prior year.

- d. Making deposits with FTD coupons. If the employer is not making deposits by EFTPS, they must use Forms 8109B to make deposits at an authorized financial institution.

6. Deposit Penalties

Penalties may apply if employers do not make required payments on time, if they make deposits for less than the required amount or if they do not use EFTPS when required. Deposits made to an unauthorized financial institution, *paid directly to the IRS*, or paid with an employer's tax return is subject to a 10% penalty.

7. Corrections to errors discovered on a previously filed Form 941 after December 31, 2008 will be made on new Form 941-X (Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund).

IRM 21.3.4.16.3 (3) & (4) updated to include legislative changes and to more closely adhere to FA employees' responsibilities with regard to employment taxes.

3. Employers whose tax liability is less than \$2,500 for the year, can pay the tax due with their return if the return is filed on time. If their liability is \$2,500 or more for the year, the employer must deposit their tax liabilities throughout the year in accordance with their deposit schedule using EFTPS or by making

a deposit at an authorized financial institution using Form 8109, Federal Tax Deposit Coupon. See section 7 of Publication 51 (Circular A) for information and rules concerning federal tax deposits and to determine the employer's status as a monthly or semiweekly schedule depositor.

NOTE: See IRM 21.7.2.4.13, Form 943 Employer's Annual Tax Return for Agricultural Employees, Instructions for Form 943 instructions and Publication 51 (Circular A) Agricultural Employer's Tax Guide for additional information.

4. Corrections to errors discovered on a previously filed Form 943 after December 31, 2008 must be made using new Form 943-X, Adjusted Employer's Annual Federal Tax Return for Agricultural Employees.

IRM 21.3.4.16.4 updated to include legislative changes and to more closely adhere to FA employees' responsibilities with regard to employment taxes.

1. Form 944 is an annual return intended for small businesses whose employment tax liability is \$1,000 or less for employee and employer FICA taxes and federal income tax. Form 944 is an annual return due by January 31 of the following year.
2. Beginning with the tax year 2006, certain taxpayers will be notified that they were to file Form 944, a new, simpler employment tax return. Regulations under Section 6011, 6302, and Revenue Procedure 2009-13 provide new guidance relating to filing of Form 944. For tax year 2009, employers who are notified that they should file Form 944 may opt out (and file Form 941 instead) if they satisfy the following conditions:

An employer may opt out if:

- the employer anticipates that its employment tax liability for tax year 2009 will be more than \$1,000 or
- The employer wants to file electronically quarterly Forms 941 for tax year 2009
- Employers who opted out must have called the IRS by April 1, 2009.
- Written requests to opt-out must have been postmarked by March 15, 2009.

Beginning in 2009, the IRS will only establish Form 944 filing requirements if requested to do so by the employer.

Beginning in tax year 2010, employers will be able to opt out of filing Form 944 for any reason, if they follow the procedures set forth in future published guidance.

3. Employers must not file Form 944 unless they receive notification that they are eligible to do so. Employers who previously received notification of their qualification to file Form 944 must continue file Form 944 unless the IRS notifies the employer that they no longer qualify to file Form 944 or the employer opts out consistent with the guidelines cited above.

NOTE: For additional information see IRM 21.5.2.4.2, Adjustments With Oral Statement, IRM 3.13.2.6, Filing Requirements BMF - General, IRM 21.7.2.4.14, Employer's Annual Federal Tax Return, and Form 944 Instructions,

4. If an employer's total employment tax liability is less than \$2,500 during the calendar year, then the taxpayer may pay with the return. If the taxpayer's total employment tax liability is \$2,500 or more, the taxpayer must deposit the employee and employer FICA taxes and federal income tax withheld.

Generally, the deposit rules that apply to Form 941 also apply to Form 944.

5. The following employers cannot file Form 944.

- Employers who are not notified by mail, exceptions may apply.
- Household Employers
- Agricultural Employers

6. For additional information see IRM 21.7.2.4.14 , and Form 944 instructions.

NOTE: For payment options, see Instructions for Form 944.

NOTE: For deposit requirements, see Publication 15, (Circular E), Employer's Tax Guide, and IRM 20.1.4.

7. Corrections to errors discovered on a previously filed Form 944 after December 31, 2008 will be made on new Form 944-X Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund.

IRM 21.3.4.16.6 updated to include legislative changes and to more closely adhere to FA employees' responsibilities with regard to employment taxes.

1. Household employees include housekeepers, maids, babysitters, gardeners, and others who work in or around your private residence as your employees. Repairmen, plumbers, contractors, and other business people who work for you as independent contractors, are not your employees. Household workers are your employees if you can control not only the work they do but how they do it. Reference the Publication 926, Household Employer's Tax Guide, for additional information.
2. If you pay a household employee cash wages of more than the amount specified by law in a tax year (\$1,700 for 2009, \$1,600 for 2008, \$1,500 for 2007 and 2006), you generally must withhold social security and Medicare taxes from all cash wages you pay to that employee.
3. Do not withhold or pay these taxes from wages you pay to:
 - your spouse,
 - your child who is under age 21,
 - your parent, unless an exception is met; or
 - an employee who is under age 18 at any time during the year unless performing household work is the employee's principal occupation. If the employee is a student, providing household work is not considered to be his or her principal occupation.
4. Domestic service employment taxes are reported on Schedule H (Form 1040), which is an attachment to Form 1040. The tax is paid with the taxpayer's estimated tax payments on Form 1040ES or through increased withholding on other income. If you are not required to file a Form 1040, you must still file Schedule H to report household employment taxes. However, a sole proprietor who must file Form 940 (PDF), Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 941 (PDF), Employer's Quarterly Federal Tax Return, or Form 944, Employer's Annual Federal Tax Return, for business employees, or Form 943 (PDF), Employer's Annual Tax Return for Agricultural Employees, for farm employees, may include household employee tax information on these forms.
5. TAC employees will assist taxpayers who are household employers in completing the Schedule H to report wages paid to domestic employees.

NOTE: See IRM 21.6.4.4.8 for additional information.

IRM 21.3.4.25 updated to reflect legislative changes.

1. When taxpayers request assistance in obtaining Form W-2 and Form 1099 advise them of the following:

- a. Form W-2 generally must be provided to the payee by February 1 of the following year. In 2010, the deadline for submitting Forms 1099-B, Forms 1099S, and Forms 1099-MISC is February 15. Allow two weeks mail time.
 - b. If an employee who is terminated before the close of the calendar year requests a Form W-2, the Form W-2 must be furnished within 30 days of request or 30 days after last wage payment, whichever is later.
 - c. Form W-2 generally must be filed with the Social Security Administration by March 1 of the following year (March 31 for electronically filed).
 - d. Form 1099 generally must be filed with the IRS by March 1 of the following year or March 31, 2010, if filing electronically.
 - e. See the form's instructions for exact due dates.
2. If the taxpayer has not received Form W-2 by February 17 (March 3 for Form 1099-B, 1099-S and 1099-MISC) of the following year, follow the procedures found in IRM 21.3.6.4.7.1.

Exhibit 21.3.4-19 updated TDI Closing Codes for FA employees.

No Return Secured	Transaction Code	TAC Counter Closing Code
Subsidiary Corporation filed under Parent EIN	590	
Not Liable for return (BMF - NMF)	590/591	20
Income below FR (IMF)	590	21
Little or no tax due (P-5-133)	590	20
TP due refund	590	20
6020(b)	590	
SFR	590	
EPMF	590	
6020(b)	591	
SFR	591	
All other cases - no longer liable	591	20